

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TREVOR SWANSON,

Petitioner,

v.

ROBERT LeGRAND, et al.,

Respondents.

Case No. 3:15-cv-00405-MMD-WGC

ORDER

Trevor Swanson, a Nevada prisoner, has submitted a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (dkt. no. 1-1). His application to proceed *in forma pauperis* (dkt. no. 1) shall be granted. The Court has reviewed the petition pursuant to Rule 4 of the Rules Governing Habeas Cases, and it shall be docketed and served upon the respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. § 2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

Petitioner has also submitted a motion for appointment of counsel (dkt. no. 1-2). There is no constitutional right to appointed counsel for a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally

1 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481
2 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469
3 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case
4 are such that denial of counsel would amount to a denial of due process, and where the
5 petitioner is a person of such limited education as to be incapable of fairly presenting his
6 claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th
7 Cir. 1970). Here, the claims do not appear particularly complex, and the petition in this
8 action appears sufficiently clear in presenting the issues that petitioner wishes to raise.
9 This Court is not persuaded that counsel is warranted. Petitioner's motion is denied
10 without prejudice.

11 It therefore is ordered that the petitioner's application to proceed *in forma*
12 *pauperis* (dkt. no. 1) is granted.

13 It is further ordered that the Clerk shall file and electronically serve the petition
14 (dkt. no. 1-1) on the respondents.

15 It further is ordered that respondents shall file a response to the petition,
16 including potentially by motion to dismiss, within ninety (90) days of service of the
17 petition, with any requests for relief by petitioner by motion otherwise being subject to
18 the normal briefing schedule under the local rules. Any response filed shall comply with
19 the remaining provisions below, which are entered pursuant to Habeas Rule 5.

20 It further is ordered that any procedural defenses raised by respondents in this
21 case must be raised together in a single consolidated motion to dismiss. In other words,
22 the Court does not wish to address any procedural defenses raised herein either in
23 *seriatum* fashion in multiple successive motions to dismiss or embedded in the answer.
24 Procedural defenses omitted from such motion to dismiss will be subject to potential
25 waiver. Respondents must not file a response in this case that consolidates their
26 procedural defenses, if any, with their response on the merits, except pursuant to 28
27 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents
28 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will do so within

1 the single motion to dismiss not in the answer; and (b) they will specifically direct their
2 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v.*
3 *Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
4 including exhaustion, will be included with the merits in an answer. All procedural
5 defenses, including exhaustion, instead must be raised by motion to dismiss.

6 It further is ordered that, in any answer filed on the merits, respondents must
7 specifically cite to and address the applicable state court written decision and state
8 court record materials, if any, regarding each claim within the response as to that claim.

9 It further is ordered that petitioner will have thirty (30) days from service of the
10 answer, motion to dismiss, or other response to file a reply or opposition, with any other
11 requests for relief by respondents by motion otherwise being subject to the normal
12 briefing schedule under the local rules.

13 It further is ordered that any additional state court record exhibits filed herein by
14 either petitioner or respondents must be filed with a separate index of exhibits
15 identifying the exhibits by number. The CM/ECF attachments that are filed further must
16 be identified by the number or numbers of the exhibits in the attachment. The hard copy
17 of any additional state court record exhibits must be forwarded — for this case — to the
18 staff attorneys in Reno.

19 It is further ordered that the parties send courtesy copies of all exhibits to the
20 Reno Division of this Court. While the Local Rules provide that parties should send
21 paper courtesy copies of filings over fifty pages, in this instance, courtesy copies may
22 be in paper form or as PDF documents saved to a CD — so long as each PDF is clearly
23 identified by exhibit number. Courtesy copies must be mailed to the Clerk of Court, 400
24 S. Virginia St., Reno, NV, 89501, and directed to the attention of “Staff Attorney” on the
25 outside of the mailing address label. Additionally, in the future, all parties must provide
26 courtesy copies of any additional exhibits submitted to the Court in this case, in the
27 manner described above.

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1 It is further ordered that the Clerk file petitioner's motion for appointment of
2 counsel (dkt. no. 1-2). The motion for appointment of counsel is denied.

3 DATED THIS 30th day of December 2015.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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